S. HRG. 98-997

REVISED CONSTITUTION OF AMERICAN SAMOA

HEARING

BEFORE THE

SUBCOMMITTEE ON
ENERGY CONSERVATION AND SUPPLY

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON THE

REVISED CONSTITUTION OF AMERICAN SAMOA

MAY 8, 1984

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REVISED CONSTITUTION OF AMERICAN SAMOA

TUESDAY, MAY 8, 1984

U.S. SENATE,
SUBCOMMITTEE ON ENERGY CONSERVATION AND SUPPLY,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 1 p.m., in room SD-366, Dirksen Office Building, Hon. Lowell P. Weicker, Jr., presiding.

Present: Senator Weicker.

Also present: James P. Beirne, counsel; D. Michael Harvey, chief counsel for the minority; and Craig Gannett, counsel for the minority.

OPENING STATEMENT OF HON. LOWELL P. WEICKER, JR., A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator WEICKER. This afternoon, the Subcommittee on Energy Conservation and Supply will conduct oversight hearings on the Revised Constitution of American Samoa.

Last year, a section was added as an amendment to Public Law 98-213, the omnibus territory bill. This section requires that any changes to the Constitution of American Samoa should be approved by the Congress of the United States.

More recently, representatives of the people of American Samoa have gathered together in a constitutional convention to revise their constitution and strengthen, in law, those values and ideals which will protect their society and traditional culture.

I, for one, stand in support of the wishes of the people of American Samoa, and would oppose undue Federal intervention into local governance.

Today, prior to exercising our responsibility under Public Law 98-213, the subcommittee has scheduled this oversight hearing as a forum to permit representatives from Samoa and the administration to discuss the proposed revision and determine whether there are any potential or actual conflicts with the U.S. Constitution which require further discussion.

And our first witness is the Honorable Fofo Sunia, Delegate from American Samoa.

If you will step up to bat, why we're ready to go.

We welcome you, Congressman.

STATEMENT OF HON. FOFO I. F. SUNIA, DELEGATE FROM AMERICAN SAMOA

Mr. SUNIA. Thank you, Mr. Chairman. It's a pleasure and a privilege once again to come before you today to speak about a matter that relates to the territory which I represent here.

I know the pressure of nationally important issues and your particular time and your great interest and involvement in those issues, and we appreciate more, therefore, your allowing time to hear this particular question on the Constitution of American Samoa which, as you so amply and clearly stated, came before Congress last year.

The action, Mr. Chairman, was taken to meet a specific need which since then has been met. And I appreciate again Congress' action in that regard.

I do have a prepared statement that I asked be made a part of the record of these hearings, Mr. Chairman.

Senator WEICKER. The statement in its entirety will be included in the record.

Mr. SUNIA. Very briefly then, in addition to that, let me say that we have here in the Nation's Capital today our leader, the Governor of our territory, as well as the chairman of the convention, the constitutional convention that was recently held in Pago Pago, and members representing delegates to that convention, as well as some of our traditional leaders.

I will, therefore, not speak details to the revised Constitution. I simply wish to express my appreciation for your allowing this hearing.

I would like, however, for our leaders to speak the details of that particular constitution. And if I may, Mr. Chairman, I would like to have them speak now.

[The prepared statement of Mr. Sunia follows:]

AMERICAN SAMOA CONSTITUTION OVERSIGHT HEARING

CONGRESSMAN FOFŌ I.F. SUNIA

MAY 8, 1984

Mr. Chairman,
Members of the Committee,

As always, it is a pleasure to come before you to speak on a matter that relates to American Samoa, the United States Territory which I am privileged to represent in the United States Congress. I thank and commend you for the priority you have given this item, as the expeditious manner in which you are handling it testifies. I am aware that your many interests and of the demands of nationally important issues weigh heavily on your time. Mr. Chairman, we sincerely appreciate your prompt attention to our concerns.

We are here because Congress passed a law last year requiring all changes to the Constitution of American Samoa to be made only by an Act of Congress. Why did Congress do that? For one reason and for one only: to remove from the Secretary of the Interior the authority unilaterally to make amendments to the Territory's Constitution.

The need became urgent when the previous Assistant Secretary of the Interior for Territorial Affairs threatened the steady develop-

MENT OF OUR TERRITORIAL GOVERNMENT WITH ORDERS TO AMEND OUR CONSTITUTION. SUCH CHANGES WOULD HAVE BEEN FOR THE PURPOSE OF IMPOSING HIS OWN IDEAS ON HOW TO RUN THE GOVERNMENT OF AMERICAN SAMOA.

MR. CHAIRMAN, WE HERE IN CONGRESS FOUND THAT NOTION TO BE UN-AMERICAN AND UNDEMOCRATIC. A PEOPLE'S CONSTITUTION, ITS BASIC GOVERNING DOCUMENT, CANNOT BE PLACED AT THE MERCY OF ONE MAN. BY GIVING ITSELF THE AUTHORITY TO ACT ON ANY AND ALL CHANGES, CONGRESS MADE CERTAIN THAT THE SECRETARY OF THE INTERIOR DID NOT HAVE UNILATERAL AUTHORITY TO CHANGE THE AMERICAN SAMOA CONSTITUTION AND THAT THE TERRITORIAL GOVERNMENT WAS ALLOWED TO DEVELOP IN AN ORDERLY, DEMOCRATIC FASHION.

AS TO BE EXPECTED, THERE WAS A GREAT DEAL OF DEBATE OVER THIS ISSUE, BOTH HERE AND IN THE TERRITORY. THE PRIMARY CONCERN OF SOME POLITICAL LEADERS IN AMERICAN SAMOA WAS THAT CONGRESS WOULD BE TOO BUSY TO FIND TIME TO ATTEND TO OUR PROPOSALS FOR CHANGES, AND THAT BY SUBJECTING OUR CONSTITUTION TO CONGRESSIONAL ACTION, WE WERE OPENING UP THE AREAS OF LAND OWNERSHIP AND MATAI TITLES TO POSSIBLE REVIEW BY FEDERAL COURTS. IN ADDITION, THEY FEARED A LOSS OF DEPARTMENT OF INTERIOR ADVOCACY.

I FEEL THAT FIRST CONCERN IS SATISFIED BY THE SPEED WITH WHICH YOU HAVE AGREED TO CONDUCT A HEARING ON THE PROPOSED REVISED CONSTITUTION. AS TO THE SECOND AND MORE DEEP-SEATED FEAR ABOUT JEOPARDIZING THE SAFETY OF OUR LAND AND MATAI SYSTEM, I BELIEVE CONGRESS IS AWARE OF THE SAME CONCERN AND IS PREPARED TO HONOR THE U.S. COMMITMENT MADE IN THE TREATY OF CESSION - A COMMITMENT TO PROTECT AND PRESERVE

AMERICAN SAMOA'S CUSTOMS AND TRADITIONS. AND THERE IS NO EVIDENCE THAT THE OFFICE OF TERRITORIES HAS LOST INTEREST. IN FACT, UNDER THE PRESENT ADMINISTRATION OF OTIA, THERE IS MORE ASSISTANCE THAN EVER BEFORE.

MR. CHAIRMAN THERE WAS NEVER ANY INTENT IN BRINGING THIS MATTER BEFORE CONGRESS EITHER TO DISTURB TRADITIONS OR TO DISRUPT THE RELATIONSHIPS WITH THE FEDERAL GOVERNMENT. IT IS MY CONTENTION THAT CONGRESS IN ITS WISDOM CAN PROVIDE PROTECTION FOR THE UNIQUE SYSTEM OF LAND OWNERSHIP IN AMERICAN SAMOA. CONGRESS HAS ENACTED PROTECTIVE LEGISLATION FOR HAWAIIAN, ALASKAN AND INDIAN LANDS, AND THE FEDERAL COURTS HAVE UPHELD THE CONCEPT OF THIS PROTECTIVE LEGISLATION. AS THE MEMBER OF CONGRESS FROM AMERICAN SAMOA, I PLAN TO ASK FOR THE PASSAGE OF SUCH LAWS.

IN JANUARY 1984, A CONSTITUTIONAL CONVENTION WAS HELD IN THE TERRITORY. SEVERAL CHANGES WERE PROPOSED. THESE PROPOSALS ARE NOW BEFORE YOU AND ARE THE SUBJECT OF THIS REVIEW.

I AM TOLD THAT AFTER A PRELIMINARY INVESTIGATION OF THE PROPOSED DOCUMENT, STAFF AT JUDICIARY, INTERIOR, AND ALSO HERE IN CONGRESS HAVE DISCOVERED PROBLEMS THEY WISH TO STUDY FURTHER. AS THESE HEARINGS ARE IN THE FORM OF OVERSIGHT, AND ARE HELD WITHOUT LEGISLATION, I WOULD LIKE TO SUGGEST, MR. CHAIRMAN, THAT OUR GOVERNOR AND TERRITORIAL LEADERS RECEIVE ALL THESE CONCERNS, AND THAT THEY BE ALLOWED TO RECONSIDER THE PROPOSALS IN THE LIGHT OF THESE CONCERNS. AFTER SUCH RECONSIDERATION IN PAGO PAGO, AND WITH SOME CONSULTATION WITH THE APPROPRIATE AGENCIES HERE IN WASHINGTON, A FINAL VERSION CAN THEN BE SUBMITTED TO THIS CONGRESS FOR ENACTMENT.

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I MAKE THESE SUGGESTIONS ONLY IN THE SPIRIT OF ASSISTING YOUR COMMITTEE IN ITS EFFORTS TO FACILITATE THE REVIEW OF THE AMERICAN SAMOA CONSTITUTION AND TO INSURE MAXIMUM PROTECTION FOR THE TRADITIONAL SYSTEMS IN SAMOA.

AS YOU MAY HAVE NOW SURMISED, SIR, I HAVE MADE NO COMMENTS OR REMARKS ABOUT THE MERITS OF THE VARIOUS PROPOSED CHANGES. I LEAVE THAT TO MY LEADERS FROM THE TERRITORY TO INTRODUCE AND DISCUSS.

IF I MAY, SIR, I WOULD LIKE AT THIS TIME, TO PERFORM ONCE AGAIN A TASK I ENJOY AND FEEL VERY HONORED TO PERFORM. I WOULD LIKE TO INTRODUCE THE LEADER OF OUR GOVERNMENT AND MY GOVERNOR, THE HONORABLE UIFAATALI PETER COLEMAN, GOVERNOR OF AMERICAN SAMOA.

Senator WEICKER. First of all I would like to say this, Congressman, I think you do a superb job in representing the interests of your constituency, and all those that are here from American Samoa should know the very hard, detailed efforts that your representative, your delegate performs on your behalf.

What is the specific need that was met last year that you referred to?

Mr. SUNIA. Mr. Chairman, there were differences of opinion last year as to the authority of the Secretary of Interior over the territory. And, as you will recall, the previous Assistant Secretary, who is the Director of the Office of Territories, insisted that Secretary of the Interior had the right and the authority to unilaterally amend the Constitution of American Samoa and, in fact, proceeded to threaten to make one amendment which, in that particular case would have given him the authority to change the attorney general of the Government, who is a member of the Governor's cabinet, appointed by the local Governor, and confirmed by the Legislature of American Samoa.

We did not feel at that time that that was the right thing for him to do, to impose his own will on the government of—I mean the elected government of the people, and so we sought to have Congress pass an act that would remove from the Secretary of the Interior unilateral authority—if he did, in fact, have one, to unilaterally amend the constitution of the territory.

Senator WEICKER. Well, I know that that is the case. I just have to point out, the reason for the difficulty. The difficulty with tailoring laws or constitutions to individuals is exactly what has happened here; which is, you do it in the one instance, and then that reason disappears. This is why we have to turn around and bring things back into balance.

Constitutions and law should be written in the sense of general principle and for all time, if you will, and not because of various individuals who may be on the scene today and gone tomorrow.

I can appreciate your apprehension as to the individual that was there and who is gone today. But it also shows in terms of what needs to be done vis-a-vis our relationship between the United States and American Samoa. Those terms should really be based on broad principle and respect rather than whoever happens to be in Washington or not, as the case may be.

In any event, I appreciate everything, Congressman, that you have done to expedite matters here. Why don't you go ahead and proceed to bring to the witness table and introduce those that you would like to have testify.

Mr. SUNIA. Thank you very much, Mr. Chairman. I have the honor to introduce our Governor, who is the leader of our territory, Hon. Uifaatali Peter Coleman; and next to him is the president of our Senate, Hon. Galeai Poumele. And I'm sure you remember the older gentleman, who is the chairman of the recently held Constitutional Convention, High Chief Salaono. And behind him is High Chief Fuimaono, who once held the post of delegate to Washington; and High Chief Mulitauaopele, and High Chief Faiivae, who assisted the chairman in the recently held convention. And behind them is our attorney general. On the far end over there is the Speaker of the House, Hon. Tuana'itau Tuia, and next to him is Representative Mulai. We also have in the room Senator Ulu Fona, and I'm sure Senator Luto is here somewhere, as well as the High Chief Moniteli, who is a member of the Convention.

I believe that logs out the delegation from the territory.

Senator WEICKER. Is there anybody left on the island? [Laughter.]

Mr. SUNIA. Well, Senator, this is a matter of great importance and it was necessary to——

Senator WEICKER. Well, I think, as I said, nothing is more important.

Mr. SUNIA. And while I have the floor, and before the Governor takes over, may I say, sir, that there is another omnibus bill for 1984 that is currently working in the House. There will be hearings again on that this afternoon. And we are contemplating revising and broadening this particular area, and I am seeking the advice of Mr. Bernie, whom I consider to be an old hand in this and very experienced in these matters of the territories, and in due time it will come before you, and we hope that you will have time to look at it.

Senator WEICKER. We will. And I suggest you also continue consultations with both Kim Elliot, who is my legislative assistant, and Al Stayman, who is my assistant on this committee, with regard to the territorial affairs.

Mr. SUNIA. Thank you.

Senator WEICKER. Why don't we have the Governor come forward. Proceed in any way that you and those that represent you want to, Governor. This is your opportunity, in other words, to give expression, and I want that to be had in a way that is most convenient and most proper as far as you are concerned.

STATEMENT OF HON. PETER TALI COLEMAN, GOVERNOR OF AMERICAN SAMOA

Governor COLEMAN. Mr. Chairman, we deeply appreciate the privilege and pleasure of being here to appear before your committee on the matter of the Constitution of American Samoa.

I have already prepared my statement in written form, and I request that it be made a part of the record.

Senator WEICKER. It will be included in the record in its entirety.

Governor COLEMAN. And I will highlight the statement to cover certain points.

The history of constitutional development in American Samoa is one that started back in 1955, where we drafted a constitution. There were two approaches before us at the time. One was the approach to develop the constitution locally, and make the people part of that development, or, one to have an Organic Act through the Congress.

Our people at that time, and our leaders, decided to develop our constitution locally because of the uniqueness of our culture, the land tenure system, and our way of life.

The way of life that we're trying to protect, sir, is a way of life that had existed more than 1,000 years ago.

Our people come from a great heritage in the past. As you may know, we are known as the first navigators, even before the Vikings. So our people brought a form of government and a social system that is still in existence today.

The Treaty of Cession with the United States in 1900 protected that culture and that land tenure system. So as we develop along in our constitution development effort, we realize that we have to walk a very tight line, because the full impact of the U.S. Constitution can be very devastating to a culture like ours.

So what we have done then is to update our constitution about every 5 years. But what happened last year, as our distinguished Congressman, Congressman Fofo had indicated, we ran into some problems for the first time in the history of our relationship with the United States and with the Interior Department. We had some very strong differences on matters concerning self-government in American Samoa.

At the time, the Assistant Secretary then, had undertaken certain steps which I felt, and all of us in Samoa felt were too much in the extreme to the point where it would cause very serious embarrassment to our people before the whole Pacific Island community, and that was our concern.

When the matter came up for congressional action, it was our thought that the authority of the Secretary of the Interior to change, modify or amend the constitution should be checked. And we thought at that time the check would be in the Congress.

However, as time went on, as you indicated, Mr. Chairman, the change in personnel and the present Assistant Secretary of the Department of the Interior is a person of great sensitivities, and the sense of human awareness, so that the relationship now with the Office of Territorial and International Affairs is that of a very close operation and mutual respect for one another.

But we have found in developing our constitution that in bringing it before the Congress, that after extensive discussions and studies, that a congressional action might result in hurting our own culture and our way of life.

It is not that we do not respect the fundamental rights guaranteed by the U.S. Constitution, it's that we feel that without the protection of our land, we will have no culture; and, without any culture in our way of life, then we have nothing left, other than existence.

So with the problem now facing us, we want to respectfully request, sir, to hold off the final decision of your committee, sir, and the Congress on this matter so that we would have a chance to review more closely the omnibus bill that transferred the authority of the Secretary of the Interior to the Congress.

And we would like to recommend that that authority be returned to the Interior Department, with the provision that if the Secretary of the Interior decided to change or amend the constitution without consultation with our people—and we feel strongly that such a change must be returned to our people, and our people give it the approval through referendum.

And so we feel that at the present time in our level of political development we have not reached that point where we can find complete compatibility between our local constitution and the constitution of the United States.

And we appreciate very much, sir, your kindness and consideration in using this hearing here to enable us to appear.

A good number of our people came up for our budget hearings, both in the Senate and in the House, so the additional members are some of the representatives of the Constitution Convention Delegates, and with us is one of our senior statesmen, the High Chief Salaono, who was the Chairman of our Convention.

Thank you very much, Mr. Chairman.

[The prepared statement of Governor Coleman follows:]

STATEMENT OF THE HONORABLE PETER TALI COLEMAN
GOVERNOR OF AMERICAN SAMOA
BEFORE THE UNITED STATES SENATE SUBCOMMITTEE
ON ENERGY CONSERVATION AND SUPPLY
TUESDAY, MAY 8, 1984

Chairman Weicker, it is truly a pleasure to be here with you and the members of your committee. I want you to know that we take great pride in being a part of the official family of the United States of America. The relationship of American Samoa and the United States has been characterized by a strong mutual bond of friendship, respect and reliance. This relationship goes back almost a full century, when the people of American Samoa made available the rich abundance of our islands to benefit the United States Navy in the South Pacific. The United States in turn has guaranteed protection to American Samoa not only of our islands themselves but also of our land, customs and traditions.

I would now like to take this opportunity to introduce the members of the official American Samoa Constitutional Convention delegation [Governor introduces delegation].

I am honored to be in the company of these men, particularly High Chief Salanoa, whose life has spanned many important periods in the history of American Samoa. We all have lived through many interesting and difficult challenges. In my own career in American Samoa, first as the Public Defender in 1952, the Attorney General in 1955, later as the first and only Samoan

to be appointed Governor in 1956, then as the first elected Governor in 1977 and 1980. I come here with many rich and interesting memories and a great pride in having been a small part in the development of the American Samoa government.

In order to further develop our government to meet the challenges of the 80's and beyond, we convened a Constitutional Convention earlier this year to make recommendations for the revision of our present Constitution which was adopted in 1966 and became effective in 1967.

There has been a continued development process in our constitutional history beginning in the late 1940's and culminating in the adoption of our first Constitution in 1960. All members of our delegation are concerned that this process continues uninterrupted. We ar equally concerned that we do not risk doing damage to our traditional Samoan land system or our language, culture and way of life.

The members of the delegation and I have spent many long hours discussing this hearing and the impact of Public Law 98-213 Section 12, which states:

> "Amendments of, or modifications to, the Constitution of American Samoa, as approved by the Secretary of the Interior pursuant to Executive Order 10264 as in effect January 1, 1983, may be made only by an Act of Congress.

We are pleased that you have scheduled this as an oversight hearing and have allowed us an opportunity to express our

concerns and our wishes as to the future of our Constitutional developmental and review process.

It has always been my thought that the Constitutional review function remain with the Secretary of the Interior as long as there is a system of checks and balances which would prevent arbitrary actions of officials which could have harmful effect on our Constitution or our customs and traditions. The members of this delegation and I agree that a formal submission of our Constitution to your committee or to Congressman Won Pat's committee in the House of Representatives would be premature and could put many of our traditional Samoan institutions and customs in jeopardy.

It is my feeling that the needed checks on arbitrary changes in our Constitution should flow from the people of American Samoa, therefore I would propose the following as substitute legislative language for P.L. 98-213 §12.

> "In addition to the rights already possessed, the Territory of American Samoa has the right tc provide for its common welfare and may adopt an appropriate constitution, which constitution shall become effective when approved by a majority of the registered voters residing in American Samoa, at a general election or a special referendum called by the Governor.
>
> Amendments, revisions or modifications to the Constitution of American Samoa shall be approved in the same manner.
>
> Such Constitution, amendment, revision or modification shall not be referred to the voters until the Governor of American Samoa has forwarded same to the Secretary of the Interior, pursuant to Executive Order 10264, for review and approval within 120 days from date of submission. The Secretary may review to insure that adequate protection has been provided

for the traditional American Samoan land system, language, culture and way of life."

I hope that you share my feelings on this matter and that you find the suggested change to be beneficial. If you agree that the Office of the Secretary of the Interior is the proper forum of review for the Constitution of American Samoa than I would respectfully request that the committee take no action at this time so that we may begin to work with the Department of the Interior officials to make further revisions so that our Constitution will protect our Samoan land system, language, culture and traditions and still be compatible with our being part of the official family of the United States of America.

Senator WEICKER. Thank you very much, Governor.

STATEMENT OF HON. SALANOA S. P. AUMOEUALOGO, CHAIRMAN, CONSTITUTIONAL CONVENTION

Mr. AUMOEUALOGO. Thank you very much, Mr. Chairman, and honorable members of the committee.

As the Chairman of our 1984 constitutional convention, I would like to make a brief statement. I think you have copies of my statement.

Our Constitution is based on our political status; that is, unorganized, unincorporated. We have been here. I was the chairman of our political status study commission in 1969, and also in 1979. We came down here in 1969, and we had a conference with the Senate Judiciary Subcommittee. So we discussed the matter then. Then all these two Political Study Commission reported to maintain our status quo, because we would like the protection of our lands, our customs and our way of life.

We feel that any act of Congress, the Constitution of the United States will apply there. So that is the reason why we ask this committee—I've tried to comply with our Governor's request, that our constitution be returned back to us so that we may look to it again and try to comply with our present status.

I think our present status, our people are happy. With respect to this law recommended, we just learned of this law after it was passed, this Public Law 98-213, 6, and 12.

So I don't want to take much time. I thank you very much.

[The prepared statement and additional material submitted by Mr. Aumoeualogo follow:]

TESTIMONY OF HC/SALANOA S.P. AUMOEUALOGO

BEFORE THE UNITED STATES SENATE SUBCOMMITTEE

ON ENERGY CONSERVATION AND SUPPLY

WASHINGTON, D.C.

(TUESDAY, MAY 8, 1984)

Mr. Chairman, Senator Lowell P. Weicker, Jr.,
Distinquished Members of the Subcommittee on Energy
Conservation and Supply

Good Afternoon:

My name is Salanoa S.P. Aumoeualogo. I am indeed honored to have this privilege of addressing you and bringing to you the alofas and warm greetings of our people back home.

I am particularly honored as Chairman of the recently concluded 1984 Constitutional Convention of American Samoa, to present to you our completed work, and I would like to present each of you with a copy of the Resolution expressing the Convention's position concerning the proposed Constitution of American Samoa.

This document best expressed the desires of our people in not only maintaining our relationship with this great Nation of the United States, but at the same time, preserve, foster and maintain our own Samoan way of life. We are extremely proud as Samoan People to be part of the greatest Country on the face of this earth and being a member of this great family, the American Family.

The United States and especially this great Body, the United States Congress, since April 1900 when the United States Flag was first raised over American Samoa soil, has shown sensitivity to the needs of our people and more specifically, the preservation of our Samoan way of life.

As your household in the South Pacific, the Territory of American Samoa enjoys a unique and meaningful partnership with the United States. We began this beautiful relationship when our forefathers ceded Tutuila and Manu'a to this great country in 1900 and 1904 as reflected in the Treaties of Cessions implementing the agreements and desires of our people with the United States to become members of this great Family. We know, we both have lived up to our respective parts of our agreements. American Samoa is perhaps the smallest member of the American Household, but we have tried in our own little ways to contribute to this great Nation that we are most proud to be part of.

I humbly address you with some authority as I am now 72 years old and has personally participated throughout the political development of American Samoa starting from the establishment of our Fono (Legislature) in 1948, then the change over from the Naval Administration to Interior. I am a founding member of our Legislature and President of our Senate for many years; participated in all three (3) previous constitutional conventions and was Chairman of the First and Second Future Political Study Status Commission of the Territory.

In the past 15 years culminating to the 1984 Constitutional Convention, our people have been deliberating long and hard as to our political status, and particularly, our relationship with this great Nation. I am proud to state to you Mr. Chairman and before this Subcommittee, that American Samoa

enjoy and welcome our present status as an unincorporated and unorganized territory of the United States. It signifies our desire to be part of the American Family, and at the same time, it preserves and protects our communal land and matai systems, the basic core of our Samoan way of life.

Please make no mistake about it, we have no desire of an 'organic act' for American Samoa.

The United States Congress has played, and we pray, that it will continue to play, a meaningful role in our development, and particularly, the role of being the protector of our Samoan way of life. Congress participated in permitting us to popularly elect our own Governor and of course the sending of American Samoa's delegate to the United States Congress. We truly appreciate this increased autonomy as we move forward through the process of our economic and political developments.

There are but just a few noted changes or amendments we have made in this 1984 Constitution, our basic and most vital concern however, is the protection of our communal land and matai systems from interference, however good intentioned they may be, with our free exercise of our customs, culture and tradition that sometimes may perhaps conflict with your own way of doing things here in the United States. We ask for your understanding and tolerance.

As you know, American Samoa is very small consisting of only 76 square miles 2/3 of which are mountains and hills. There are only about 32,000 of our people living in the Territory. Thus understandably, the basic theme in the Constitution is to ensure protection of our culture and the small amount of land we have. No laws are more central to the preservation of our way of life than those restricting land ownership and

alienation, necessary so that our children and their children and grandchildren, would live to enjoy this small but unique Territory of the United States in the South Pacific. We are likened to a very small fish that swims on the reef but never beyond, because once it wanders beyond the reef and into the deep ocean, it will be immediately swallowed by a big fish.

As you know, we are simple people with very simple needs. We are extremely reluctant to be involved in the complicated and complex federal way of doing things. We feel much safer and comfortable swimming in shallow and calm waters so that the big fishes will not be tempted to even consider us a meal of any kind.

Our Senators are elected not by the electorate, but selected based on Samoan customs among the matais from each representative district. I am proud to state that this was one of the recommendations made by the Mile's Congressional Commission that visited American Samoa in the 1950's and recommended that our Senate be constituted based on Samoan customs and that our House of Representative be popularly elected as in the United States. I am more proud to state that this manner of selecting and electing members to our Legislature is working and am positively sure, will continue to work.

As stated above, the American Samoa Constitution meant to preserve the core of the "FAA-SAMOA" - our system of land ownership and property rights with our matais as administrators thereof. Our local courts have upheld it; you have allowed us to continue it. It has worked for us since times immemorial and has been working, and still is, for the

past 84 years we have been members of the American Family. We know, it is going to work for many years to come. All we ask is that you continue to let our people decide and determine for ourselves. If it stops working, our people will advise us. I ask to please have faith in the wisdom of our people to determine and plot our future.

Land to the American Samoan is life itself. He cherishes the land where his ancestors came thousands of years ago, and where he and his family and children were born. Land is the only thing he values above anything else because it belongs to him and hisfamily and will belong to their children, just as it belonged to his predecessors for centuries past. Land is what he lives from, for it is only on the land that he can plant, nurse, and grow his plantations of coconuts, papayas, taro, avodacos, breadfruit, bananas, mangos, quavas, pineapples, citrus, vegetables, and other food. Land is where he cooks his food. Land is where the bodies of his beloved ancestors are buried. Land is where he builds his fale, large or small. Land is the material thing he lives most, after his children. Land is the most valuable inheritance he can leave his family and children when he dies. Land is his horizon between the sea and the sky. Land is the great gift from God to him on this earth, after life itself.

The whole fiber of the social, economic, traditional and political pattern in American Samoa is woven fully by the strong thread which we place in the ownership of land. Once this protection for the benefit of American Samoans is broken, once this thread signifying the ownership of land is pulled, the whole fiber and foundation, the whole pattern of our Samoan way of life will be forever destroyed.

Mr. Chairman, there are not enough words in my language, or enough words of your language that I know, to express to you or impress upon this distinquished Subcommittee the importance to us of preserving our Samoan way of life. I pray and trust that our Heavenly Father assists me in explaining to you what is dear and cherished by all of us.

You are undoubtedly aware of the concern of all the people of the Pacific about nuclear testings in our area. We are also very much concern about them. We ask Congress to help us in advising other nations to cease these irresponsible actions because they are not only real threats to our future and those of our children, but these nuclear testings are also destroying the most dependable source of our economic development contain in the ocean. The ocean waters around American Samoa and in the Pacific are perhaps the last undeveloped part of this earth left. America must and should be the leader in ensuring that our ocean waters and the resources therein are not destroyed or exploited by other nations.

To enable us to meaningfully plan and mold the course of our political development, we must give and let our own people decide and make these plans. We have therefore accordingly defined the term American Samoan citizen to meet this need.

We believe that this document strikes an effective balance. We want to work with Congress. We need your input, your advise, your praise, and of course your criticisms. Most of all, we need your understanding. Your dedication and assistance will ensure that we have the best possible framework from which to mold our future, formulate our government, our policies, our very way of living. We need your help and we welcome it.

As I understand the procedures you have already set out, the People of American Samoa will have the ultimate decision as to whether this Constitution becomes a reality. I am really thankful to you for that and I very much appreciate your letting our people be the final decision-makers of this document. I truly believe that this Constitution, as amended, is in the best interest of all the people of American Samoa. With your guidance, we know that we will leave Washington with great confidence that this would be the best possible blueprint for our future and that our people will also be similarly convinced and will give their approval.

And, when this Constitution becomes a reality, hopefully within the near future, American Samoa will have taken one more stride in strengthening our partnership and friendship with this great Nation. I am reminded by what the famous American writer Emerson once said, "America was built by practical men, it will continue to be built by practical men." America is known throughout the Pacific as the 'protector' of the free world and champion of the little and common man. We as a member of the American Family have tried and will continue to live up to this outstanding image of America so that the world can see that America really and truly is the champion of the common man. Our Delegation is consisted of some of our leaders who also chaired the main committees in the Constitutional Convention, and our legal advisor. They will be glad to answer any question or explain further any of the new amendments to the Constitution.

In conclusion, I ask to please let us all look into this document, the Constitution of American Samoa, as proposed, from the same window, instead

of from different windows, so that we could all have seen the beauty of the scenic realities of things God has given us from the same perspective, and to utilize them to glorify HIS Nation on earth as it is in Heaven.

God bless the United States. God bless American Samoa. Faafetai tele.

SOIFUA,

SALANOA S.P. [illegible]
Chairman, 1984 Constitutional
Convention of American Samoa

39-179 O—84——4

HIGH CHIEF SALANOA S.P. AUMOEUALOGO'S
SPEECH BEFORE THE U.S. HOUSE OF REPRESENTATIVE
SUBCOMMITTEE OF INSULAR AFFAIRS

Mr. Chairman, and Members of the House Subcommittee on Insular Affairs. I am honored to have this privilege of addressing you, and members of Congress who serve on this important subcommittee. I come before you as the Chairman of the recent Constitutional Convention of American Samoa. As such, I would like to present each of you with a copy of a Resolution by the 1984 American Samoa Constitutional Convention expressing the Convention's position concerning the proposed constitution of American Samoa. In addition, I come before you not only as a Samoan, but also as an American Samoan with a proud heart being a member of this great family - the American family.

I, and all our people, are proud of our Samoan heritage, as our heritage is our identity of the past which makes us what we are as of today. I, and all of our people also are equally proud of our long friendship, common interests, and being members of this great American family.

As your southern-most household, the Territory of American Samoa enjoys a unique and meaningful partnership with the United States. We have been deliberated over the last 15 years as to our political status, initially at the 1969 American Samoa Political Status Commission, and again in 1979, and up to this moment the people of American Samoa enjoy and welcome our present status as an unincorporated and unorganized territory of the United States.

Some of you have been in American Samoa. I wish all of

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you would have an opportunity to participate and witness our Flag Day Celebration which is annually held on April 17. It is the biggest celebration of the year not only to commemorate our strong ties with this great nation, but also to honor our forefathers' wishes and desires as embodied in the 1900 and 1904 Treaties with the United States to become members of this great family. The present arrangement will continue to work well for both of us.

As an unincorporated and unorganized Territory, we have been recently experienced considerable local autonomy as you have granted us. Our people have been given the right to popularly elect Our own Governor. You have also permitted us to send a Delegate to the United States Congress. We appreciate this increased autonomy as we move forward through processes of economic and political developments.

More important, we very much appreciate your allowing us to live as Samoans and practice our own customs and traditions, the things that have made us and our ways of life so special. We cherish what we are even as we move forward economically and politically. Ours is a special culture, a beautiful way of life and we want to maintain it - even as we move forward together. Not only can the old and new blend, in our islands, they are blending in a unique and harmonial fashion.

Our constitution, as presently in force, and the new changes as proposed, represents our efforts to continue this

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blending process. It is intended to preserve our customs and traditions and especially our land system as we move forward with you to face the coming times of change with confidence and hope. Our land policy and the way our bicameral legislature is set up as contained in Articles I and II of the Constitution are illustrations of the point made. We are proud to be among the very few Pacific Island people who are able to keep and maintain most of our customs and traditions harmoniously along with long exposure to western ways of life. That is because we place a lot of values into our customs and traditions. They are our natural and inalienable possessions. The Samoan spirit is one of partnership and optimism for the future, with appreciation for the past.

The American Samoa Constitution meant to preserve the core of the "FAA-SAMOA" - our system of land ownership and property rights with our matais as administrators thereof. Our local courts have upheld it; you have allowed us to continue it. It has worked for us since times immemorial and has been working, and still is, for the past 84 years we have been under the U.S. flag. We know, it is going to work for many years to come. All we ask is that you continue to let our people decide and determine for ourselves. If it stops working, our people will advise us. I ask to please have faith in the wisdom of the Samoan people to determine and plot our future while at the same time preserving

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our FAA-SAMOA.

It is my belief that this document strikes an effective balance. We want to work with you. We need your input, your advise, your praise, and of course your criticisms. Your dedication and assistance will ensure that we have the best possible framework from which to formulate our government, our policies, our very way of living. We need your help and we welcome it.

As I understand the procedures you have already set out, the people of American Samoa will have the ultimate decision as to whether this constitution becomes a reality. I am really thankful to you for that and I very much appreciate your letting our people to be the final decision-makers of this document. I respectfully believe that this constitution, as amended, is in the best interests of all the people of American Samoa. With your guidance, we know we will leave Washington with great confidence that this would be the best possible blueprint for our future and that our people will also be similarly convinced.

And, when this constitition becomes a reality, American Samoa will have taken one more stride in strengthening our partnership and friendship with with greatest nation on this earth - the United States of America.

In conclusion, I ask to please let us all look into this document, the Constitution of American Samoa, as proposed,

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from the same window, instead of from different windows, so that we could all have seen the beauty of the scenic realities of things God has given us from the same perspective, and to utilize them to glorify HIS Nation on earth and in Heaven. May God bless the people of the United States as well as the people of American Samoa.

IA SOIFUA,

SALANOA S.P. AUMOEUALOGO
Chairman, 1984 Constitution
Convention of American Samoa

RESOLUTION BY THE 1984
AMERICAN SAMOA CONSTITUTIONAL CONVENTION

A RESOLUTION EXPRESSING THE POSITION OF THE PEOPLE OF AMERICAN SAMOA TO THE UNITED STATES CONGRESS REGARDING THE THE MATTERS OF THEIR POLITICAL STATUS, AND DESIRE TO PROTECT THEIR LANDS, PEOPLE, TRADITIONS AND CUSTOMS.

WHEREAS, the islands of Tutuila and Manu'a collectively known as American Samoa were in April 17, 1900 and July 14, 1904 respectively ceded to the protection of the United States government;

WHEREAS, American Samoa has been, for the last eighty-four years, under the governing and administration of the United States Government as an unincorporated and unorganized territory of the United States; and

WHEREAS, American Samoa appreciates some of the progresses seen in its political, social, and economic developments, although its people are mindful of their Samoan heritage and traditions which makes it a unique territory under the U.S. flag, and

WHEREAS, it is the desire and mandate of the people of American Samoa to preserve and protect their lands, customs and traditions from being affected by outside forces including but not limited to congressional Act or Acts, or by federal judiciary decisions, and

WHEREAS, Congress has enacted Public Law 98-213 known as the Omnibus Bill, and was approved by the President of the United States wherein it is provided;

> "Section 12 Amendments of, or modifications to, the Constitution of American Samoa, as approved by the Secretary of the Interior pursuant to Executive Order 10264 as in effect January 1, 1983, may be made only by Act of Congress"; and

WHEREAS, the people of American Samoa, by and through their elected delegates have convened in a constitutional convention in Fagu Fago, American Samoa, in order to deliberate their fundamental rights as a people and their duties and obligations as a government; and

WHEREAS, the people of American Samoa have by and through their Delegations to the 1984 Constitutional Convention, after having reviewed and revised their constitution, are desirous of maintaining their mandate in protecting their Samoan traditions, customs, system of land, their language and their way of life, and have implanted therein certain languages and provisions to further documented their commitment and desire to protect American Samoa and her identities as properly summarized in the Preamble to the said constitution; and

WHEREAS, the people of American Samoa are concerned that the United States Congress might contemplate a unilateral attempt to develop an [illegible] for American Samoa, or similar means or methods through which our systems of land, our Samoan customs and traditions, and our Samoan way of life would be affected without the express consent of the people of American Samoa,

NOW THEREFORE, BE IT RESOLVED BY THE 1984 AMERICAN SAMOA CONSTITUTIONAL CONVENTION that, we the Delegates thereto, wish to submit this revised constitution of American Samoa to the Congress of the United States as a document containing therein what the people of American Samoa have decided to be general rules and laws to govern their existence as a government and a territory of the United States; and

BE IT FURTHER RESOLVED that, Congress shall consider the uniqueness of our territory and its people, lands, customs and traditions in their deliberation over the proposed Constitution of American Samoa; and

BE IT FURTHER RESOLVED that, the people of American Samoa, speaking through their delegates to this 1984 Constitutional Convention, do not wish the Congress of the United States to

pursue or consider an organic act or an organized status for American Samoa without the express consent and approval of the people of American Samoa, and that such express consent and approval are to be expressed only by public referendum and not be left to matter or political interpretations by public officials; and

BE IT FURTHER RESOLVED that, Congress shall adopt and maintain the present political status of American Samoa as an unincorporated and unorganized territory of the United States, until and unless otherwise expressly recommend by the people of American Samoa; and

BE IT FURTHER RESOLVED that, our prayers call for the blessings of the Almighty God be upon the United States Congress, the President, the Judiciary, and all the people of the United States and its leaders, as well as upon the people of American Samoa and its leaders, so that we all may see His Light and dwell in His PEACE; and

BE IT FURTHER RESOLVED that, certified copies of this Resolution shall be transmitted to the Honorable Strom Thurmond, President Pro-tempore of the Senate, Honorable Thomas P. O'Neill, Jr., Speaker of the House of Representatives; Honorable Howard Baker, U.S. Senate Majority Leader, Honorable Robert C. Byrd, U.S. Senate Minority Leader; Honorable James McClure, Chairman, U.S. Senate Committee on Energy and Natural Resources, Honorable J. Bennett Johnston, Ranking Minority Leader; Honorable Lowell P. Weicker, Jr., Chairman, Senate Subcommittee on Energy Conservation and Supply; Honorable Morris Udall, Chairman, U.S. House of Representatives Committee on Interior and Insular Affairs; Honorable Antonio B. Won Pat, Chairman of the House of Representatives Subcommittee on Territories and Insular Affairs; Honorable William P. Clark, Secretary, Department of Interior; Honorable Richard T. Montoya, Assistant Secretary for Territories and International Affairs; Honorable Fofo I.F. Sunia, American Samoa's Delegate to the U.S. Congress; Honorable Peter Tuifaatali Coleman, Governor of American Samoa; Honorable Galea'i P. Pounele, President of the Senate; Honorable Tuana'itau F. Tuia, Speaker of the House of Representatives; and the original thereof shall be transmitted to the President of the United States.

FOR AND ON BEHALF OF THE 1964
AMERICAN SAMOA CONSTITUTIONAL
CONVENTION

HIGH CHIEF [illegible] PALOGO
Chairman of the Constitutional
Convention

39-179 O—84——5

SUMMARY OF CHANGES IN PROPOSED
CONSTITUTION OF AMERICAN SAMOA

Article I - Bill of Rights

Section 2 "Communal" property and "private property" are being particularized as property that comes under the "taking" clause.

The other change calls for the government to give back any property it "takes" if the property is not used for a public purpose within (5) years of the initial taking.

Section 3 The new provision states that no new business shall be allowed in American Samoa (exception = a new business not in direct competition with an existing business) unless 51 ownership and control of such business be vested in persons of American Samoan ancestry.

Section 6

(b) In all criminal prosecutions, the accused would now have the right to a written copy of the accusation made against him. The accused also would have the right to a jury trial if conviction could result in six (6) months or more in prison.

(d) This gives a court discretion to deny bail if release of the accused would constitute a danger to the community-in serious cases.

Section 11 (new provision)

The Government school system shall stress academic and vocational skills and it shall instruct its students in the Samoan language and customs.

Article II - The Legislature

Section 1 The first addition gives the Legislature the general "police power" that states have.

(c) This allows legislation to protect the Samoan people from nuclear harm or other damage to its fish, ocean products or other resources within territorial waters.

Section 2 This provision re-confirms that the Senate will be constituted according to Samoan customs and increases the membership in both houses of the Legislature.

Section 3 This requires that a member of the Legislature must, in addition to all previous and current requirements, also be a citizen of American Samoa.

Section 4 This states the new Senate districts.

Section 7 This change would allow a convicted felon to vote if he maintains good behavior for two (2) years following the date of conviction, or his release and discharge (the discharge requirement is currently in effect) from prison, or discharge from probation or parole (new), whichever is later.

Section [illegible] This clarifies that a bill passed over the Governor's veto by a two-thirds (2/3) majority of both houses of the Legislature shall become law.

Section 20 This change provides for Legislative Counsel and Staff for both the Samoa House and Senate.

Section 25 This change would mandate that the compensation due the members of the Legislature cannot be changed to take effect during that current term.

Section 26 This is a new section. It deals with which Government officials may be impeached and under what circumstances. It also provides for recall elections under certain conditions.

Section 27 This new section gives the Senate sole power to confirm some appointments of the Governor.

Article III - Judicial Branch

Section 1 This section vests judicial power in the American Samoa Supreme Court, trial courts and a Land & Titles Court as well as the district courts. The Legislature still may establish other courts as it sees fit.

Section 2 This new section describes the makeup and authority of the prospective Supreme Court.

Section 3 This new section discusses how the Chief Justice would administrate the Supreme Court.

Section 5 This new section sets forth the jurisdiction of the various American Samoa courts.

Section 6. This new section states that the Secretary of the Interior shall appoint the Chief Justice and Associate Justices of the Samoa Supreme Court, subject to advice and consent of the Samoan Senate. Also, the procedure to appoint Samoan Associate Justices is set forth.

Section 7 This new section establishes the Land & Titles Court and spells out its jurisdiction, judicial membership, appeals system and rule making process.

Section 8 This new section gives the Supreme Court power to make rules governing practice and procedure in all courts, subject to Legislature approval.

Section 9 This new section defines the crime of treason and provides that no one shall be convicted of treason except on the testimony of two (2) witnesses to the same overt act, or a confession in open court.

Article IV - Executive Branch

Section 1 This change vests the executive power with the Governor.

Section 2 This change gives the Lt. Governor powers and duties prescribed by this Constitution, the laws of American Samoa or powers not inconsistent therein that may be given to him by the Governor.

Section 3 This new section provides that the Governor and Lt. Governor shall be elected jointly by the people at the same time as U.S. Presidential elections, and it also forbids a Governor from holding more than (2) successive terms.

Section 4 The Secretary of Samoan Affairs is directed to act as is provided for in the laws of Samoa.

Section 5 This new section states the qualifications necessary in order to be eligible to hold the office of Governor or Lt. Governor.

Section 6 This new section provides that the compensation of the Governor and Lt. Governor shall be prescribed by

law, but shall not be changed during the current term of office.

Section 8 This gives the Governor power to remove for cause (as well as appoint) certain local officials.

Section 9 This states that the Governor may issue executive regulations which are not consistent with applicable laws.

Section 12 This new section delineates the line of succession in cases of temporary disability, abscence, or permanent disability or vacancy of the Governor and/or Lt. Governor.

Section 13 This section directs the Governor to give an annual report of the [illegible] of the American Samoa Government [illegible] officials (as well as the Samoan leg[illegible] days after the close of each fiscal yea[illegible] as provided by the laws of American Samoa.

Article V - Miscellaneous

Section 4 Section 4 directs when and how a proposed new constitution shall be submitted to the voters, how delegates to a constitutional convention would be chosen, and states that if a future proposed constitution is rejected by the voters or the U.S. Congress, the Governor shall call another constitutional convention five (5) years from the date of the previous constitutional convention.

Section 11 This proposed new section defines a "Citizen of American Samoa" as a person who was born in American Samoa of American Samoa ancestry; or a person born in the United States or any of its territories or possessions of American Samoa ancestry.

Section 12 This proposed new section states that no organic act or similar legislation alienating Samoan Communal land or destroying the Samoan way of life shall be enacted by or for the American Samoa Government without the consent of the leaders and the people of American Samoa.

Section 13 This proposed new section would forbid persons convicted of treason or a felony, subversives or aliens, to hold public office

Senator WEICKER. Are there others, Governor, that care to speak before I go to questions?

Mr. SUNIA. I think, Mr. Chairman, our Governor and the chairman of our Constitutional Convention have spoken on our behalf. Thank you very much.

Senator WEICKER. As I understand it now, what is being asked is that matters return to the status quo, as far as the powers vested in the Secretary of the Interior's Office are compared to having congressional oversight.

Governor COLEMAN. Yes, sir, but up to a certain point. We feel that if when the power is returned to the Secretary of the Interior, that any changes or modification or amendments made arbitrarily by the Department of the Interior must be forwarded to our people, and our people will make the decision on these changes through referendum.

Senator WEICKER. So in effect, the oversight function, the approval function would rest in your people rather than the Congress?

Governor COLEMAN. That's right, at this phase of political development.

Senator WEICKER. Well, it certainly sounds to me to be the best possible solution, I assure you that.

If the authority for approving constitutional revisions is returned to the Secretary of the Interior, with some other check on unilateral action, then would American Samoa continue to consider correcting the problems in this proposed constitution? Have there been questions raised as to the work of the Constitutional Convention by authorities in the United States?

Governor COLEMAN. Yes, Mr. Chairman.

Senator WEICKER. Well, I find this very difficult to adjudicate, but my own feeling is that you ought to have your own constitution, period. I don't really think that the Congress of the United States or the Secretary of the Interior or anybody else ought to be involved. So my questions are not a reflection of my own personal feelings on the matter as much as trying to make sure that we try to straighten out this impasse and have it done to the satisfaction of the people of Samoa.

Governor COLEMAN. Yes, sir.

I think the best situation will be that the authority for approval rests with the people of American Samoa. But at the present time we have a close relationship with the Department of Interior. Our budgeting process, for instance, requires us to submit our budget to the Department of Interior, and we would like to maintain that close relationship.

Senator WEICKER. In other words, your feeling is that there is no reason why the control of the matter isn't sufficient in terms of the budget without getting into the matter of the constitutional laws. Is that correct?

Governor COLEMAN. That's right, sir.

I think as an eventual phase of our constitutional development, any changes in our Constitution must remain with our people.

Senator WEICKER. Oh, I have no argument with that.

I really don't have any further questions, as much as I will have questions of the Assistant Secretary and with the Justice Department.

Is there anything further that you would like to say while you're here before I move on to the next witnesses?

Governor COLEMAN. No, sir, we don't have anything further to say, just to thank you, sir, for this opportunity to be here.

Senator WEICKER. Anybody else? Congressman?

Mr. SUNIA. Nothing further, Mr. Chairman, except to say that the Governor's point is, in fact, the point that I mentioned or alluded to earlier in that we're working on developing the proper wording to satisfy that need. And hopefully it will be part of the Omnibus bill this year, sometime in the very near future. It's being heard in the House Subcommittee on Insular Affairs again.

Senator WEICKER. Thank you very much. I appreciate your testimony.

I imagine that you will be staying here in the room so that you will have an opportunity to hear the responses from the Interior and the Justice Department in case there is some matter that's raised that you might like to ask about. I want you to feel free, I might add, during the testimony of the Department of the Interior or the Justice Department that if there is some point that is raised that either you disagree with or you would like further clarification, if you will be good enough to indicate to the Chair, and I'll be glad to recognize you for purposes of asking a question. We're all under the same roof here, and it's a long trip back to Samoa, and there's no point in going back and forth while we're here we might as well try to iron out as much as we can iron out this morning.

Thank you very much.

Governor COLEMAN. Thank you, Mr. Chairman.

Senator WEICKER. The next witness is the Honorable Richard Montoya, the Assistant Secretary of the Interior for Territorial and International Affairs.

Mr. Secretary, welcome. Your statement in its entirety will be included in the record. Why don't you proceed in such way as you deem.

STATEMENT OF RICHARD T. MONTOYA, ASSISTANT SECRETARY FOR TERRITORIAL AND INTERNATIONAL AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. MONTOYA. Thank you, Mr. Chairman. It's good to be here, particularly discussing this issue, the revision of the Constitution of the American Samoa.

As you know, this administration has been committed to providing as much self-determination to the territories as possible.

In my short tenure at the Department of the Interior, I have had a crash course in the Samoan way of life. And I very much admire the leadership that the Samoan people have in their elected representative, Mr. Sunia, Governor Coleman, and their legislative body, the Fono.

They entered into a herculean task in revising this American Samoan Constitution, and they handled it in a mature way. They handled it in an expeditious way. And I think that speaks highly of their desire to govern themselves as much as possible.

Last year when we had the financial crisis there, the leadership all worked together and showed that they could get the job done and keep a bad situation from just turning into a disaster.

So I have nothing but high regard and deep admiration for the people of Samoa and their leadership.

We have had a good working relationship. We have discussed the work of the Constitutional Convention, and I feel certain that if the chairman would like us to, we can get back with the leadership and discuss any further fine tuning of the document that might be necessary, or to implement whatever changes are agreed upon.

Thank you for the opportunity, Mr. Chairman.

[The prepared statement of Mr. Montoya follows:]

STATEMENT OF RICHARD T. MONTOYA, ASSISTANT SECRETARY OF THE INTERIOR FOR TERRITORIAL AND INTERNATIONAL AFFAIRS BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES REGARDING THE REVISED CONSTITUTION OF AMERICAN SAMOA, MAY 8, 1984

Mr. Chairman and Members of the Committee. I am pleased to appear today to discuss the revised Constitution of American Samoa adopted on February 16, 1984, by delegates to the American Samoa constitutional convention.

As you may know, on behalf of the Secretary of the Interior, my predecessor conferred authority on the Governor of American Samoa to call a constitutional convention. The convention was convened on January 23, 1984. The revised Constitution of American Samoa, adopted on February 16, 1984, is the work product of the convention.

The delegates to the convention are to be commended for the work they accomplished in a very short period of time. The delegates went about their job with dispatch and decorum. As this nation's Founding Fathers have attested through their writings on our own constitutional convention nearly 200 years ago, drafting a constitution is always a difficult and weighty responsibility.

Additional procedures necessary to make the revisions effective include Congressional approval and approval by a majority of American Samoan voters.

Procedure

With regard to procedure, we note that, according to the existing Revised Constitution of American Samoa, changes in the Revised Constitution will become effective upon approval by the Secretary of the Interior. This procedure was modified by Congress in section 12 of Public Law 98-213, approved December 8, 1983, which states:

> Amendments of, or modifications to, the Constitution of American Samoa, as approved by the Secretary of the

Interior pursuant to Executive Order 10264 as in effect January 1, 1983, may be made only by Act of Congress.

Communications regarding the February 16, 1984, constitution have referred to the document as the "revised" Constitution of American Samoa. We are uncertain as to whether or not this is an entirely new constitution or a series of amendments to the existing revised constitution. If it is the former, we do not believe it needs congressional approval. A minor modification of Public Law 98-213 could clear up these uncertainties.

Substantive Provisions

Procedure aside, I am concerned with the effect of a number of substantive provisions contained in the draft constitution.

The Department of the Interior historically has been committed to self-government in the territories. The Legislature, or Fono, existed in American Samoa for sometime prior to the Interior Department being given administrative authority over American Samoa in 1951. It was granted genuine legislative authority in 1960 when the Secretary of the Interior approved the first Samoan constitution. The referendum on elections of the governor was mandated by the Secretary in 1977. We remain committed to increasing self-government in American Samoa, which includes the drafting of constitutions that provide the framework of government.

We would be remiss, however, if we did not note issues presented by the 1984 draft constitution that may have a significant bearing on the American Samoan government, society, and way of life. We would not want to see the

traditional social system of American Samoa, the matai system, hobbled by a constitution whose framers are attempting to preserve the Samoan way of life.

While there are a number of minor issues or typographical errors that should be dealt with in any final action on the 1984 constitution, we wish to discuss five major issues.

First, we note that Article V, section 12, contains a purported limitation on actions by the United States Congress. Even if explicitly approved by Congress, such a provision would be unconstitutional and of no effect.

Second, several provisions in the 1984 draft constitution raise the constitutional issue of equal protection of the laws. Article V, section 11, contains the following definition of "citizen of American Samoa:"

> Section 11 - Definition: As used in this Constitution "Citizen of American Samoa" means a person who was born in American Samoa of American Samoan ancestry; or a person born in the United States, or any of its territories or possessions of American Samoan ancestry.

Article II, section 7, requires that a person be a "citizen of American Samoa" in order to vote. This citizenship requirement is also a factor in the eligibility of a person to be Governor, Lieutenant Governor, a Senator, or a Representative in the Legislature. With its exclusionary and imprecise definition, the citizenship requirement could present an equal protection question should the issue come before the courts in the context of voter or office qualifications. If the equal protection grounds are sustained, the rationale could be used to challenge the composition of the Senate and the entire communal land tenure and matai system.

Third, the draft constitution removes the Secretary's powers with regard to veto override and severely limits those powers with regard to judicial appointments, thus, weakening the connection between American Samoa and the Department of the Interior. With such a tenuous relationship, it is possible that a Federal court may be more likely to say that issues in territories like American Samoa are Federal matters and thus subject to the Federal judicial system. With such an assertion of jurisdiction, we may find that the application of United States constitutional principles may run counter to the traditional way of life in American Samoa.

As a side issue, we in the Department of the Interior would not object to the power of appointment of justices being placed in a high official of the American Samoa government. Neither would we object if these appointments remain with the Secretary. We do object, however, to placing a Federal official, the Secretary, in the possible position of having a nominee rejected by the Fono, a legislative body at a different level of government. In addition, based on past judicial workload, we question the need to appoint three justices and two judges to the Supreme Court.

Fourth, Article III, section 1(c), dealing with the American Samoa legislature raises two national policy questions. The provision is as follows:

> (c) Legislation may be enacted for the protection of our people against nuclear harm or from damages or use by others of fish, ocean products, and all other natural resources within its territorial waters;

Congressional approval of the draft constitution might be viewed as authorization for excluding nuclear materials or ships from American Samoa when that may not be the policy of the Congress with regard to the 50

states and other territories. Likewise, because of the use of terms like "our people" and "others", the provision might be viewed as excluding United States citizens or persons who are not "citizens of American Samoa" from harvesting or recovering resources within the territorial waters of the United States surrounding American Samoa. National policy issues such as these may be more appropriately left to specific legislation by the United States Congress. If the constitutional convention did not intend section 1(c) to be construed as broadly as I have outlined, additional drafting to limit the section to encompass only local issues may be in order.

Fifth, Article I, section 3, deals with two issues of local American Samoan policy, and, therefore, our comments may be somewhat gratuitous. We think, however, that they may be worth consideration.

Article I, section 3, provides: "It shall be the policy of the American Samoan Government to protect persons of American Samoan ancestry against alienation of their lands." This might be construed as allowing passage of legislation against the sale of any land whatsoever in American Samoa, even to other Samoans. The constitutional convention may wish to give further consideration to this land alienation issue.

In addition, Article I, section 3, provides:

> No new business in whatever form, except businesses not in direct competition with same, shall be permitted to engage in business in American Samoa unless fifty-one per cent (51%) ownership and control of such business be vested in persons of American Samoan ancestry.

I personally believe that this is undesirable public policy. We know from experience in other areas of the Pacific that such a policy either limits outside investment and therefore retards economic development, or may provide an opportunity for unsavory persons to ally themselves with a local person and enforce control by undesirable means.
The fact, however, that the 51% provision is included in the constitution is a complicating factor. Should a change in the provisions be desired because it is causing economic disruption in the territory, American Samoa could lose a great deal of precious time in changing the provision. Months or years could be involved in drafting the constitutional amendment, submitting it to the voters and waiting for congressional approval as required by Public Law 98-213.

We believe that the entire concept should be reconsidered. If, in that reconsideration, however, the 51% provision retains support, we suggest that it be enacted as a public law of American Samoa rather than being given effect as a constitutional provision. Modification or repeal would be facilitated should the provision be shown to be harmful to economic development in American Samoa.

Senator WEICKER. Mr. Secretary, is your understanding of the situation that precipitated this hearing today the same as has been recounted by the parties and is it what we want to do now? Are you also of one mind, that this should go back into the Secretary's office rather than being a matter for the Congress to pass upon?

Mr. MONTOYA. My understanding of the situation that precipitated———

Senator WEICKER. I'm not asking your analysis of what occurred. I think we all understand that.

Mr. MONTOYA. I agree.

Senator WEICKER. All I'm trying to find out is, is it the view of the Department, the administration, now yourself, now that these matters should, No. 1, vest back in the Secretary rather than have the oversight by the Congress; and, 2, that the check on the Secretary should be provided by the Samoan people?

Mr. MONTOYA. We, Mr. Chairman, discussed this issue last week. The likelihood of this happening again is minuscule. It was a unique situation, which was unfortunate. It did happen.

The change that was recommended was never implemented. I would have to say that it makes some sense to continue with the policy of this administration, which is to bring the government back to the people and get it at the closest possible level to the people affected by same.

Senator WEICKER. Well, I know where your heart is in the matter. I just have to make it clear from the point of view of the committee as to what the problem is. Is there any dispute that we are better off with the structure being as it was before, in terms of the Secretary making the decisions rather than the Congress of the United States? Is there any dispute on that?

Mr. MONTOYA. No, sir.

Senator WEICKER. Now, my question is, how do you provide a check? And I gather—I'm only surmising this because you and I haven't discussed it, I suppose the alternatives are that that decision—whoever the Secretary happens to be—either is not subject to any review, or subject to congressional review, or subject to Samoan review. That really seems to me to be the three, or some combination of that maybe, but that's what we're talking about.

Mr. MONTOYA. That is, indeed, the issue.

And in preparing for this particular talk, one thing that I was interested in—in the way that it operated prechange, where approval came back to the Congress—was the few times that there had been a change made by the Secretary of the Interior of any of those policies having an impact on American Samoa it was very small, to the best of my knowledge. Then this incident occurred, and then the change took place where the concurrence was passed on to Congress.

But the way it was established before, it provided the flexibility and the access of the American Samoan people to make some immediate changes if those changes were necessary and they were requested by the leadership of American Samoa.

I can say with a clear conscience that during our tenure there that any changes that will come about should this revert back to the way it was in the past would have to be something that we

would be in complete agreement with the elected leadership of American Samoa.

I do not see the U.S. Department of the Interior trying to attain a role for us to dictate a Samoan way of life. It is a role that I think we are not comfortable with.

Again, if there is a change that is necessary, I am sure that the elected delegates, the Governor, and the Fono, and the Secretary of the Interior or myself could arrive at some expedient solution to whatever problem comes up.

Senator WEICKER. I suppose the difficulty, or the concern sort of relates back to ours as a government of laws, not of men. And I have total confidence, as I have expressed to the Assistant Secretary many times, in his handling of his position and doing an outstanding job. So I don't worry about you. Obviously, there was worry about other individuals, otherwise we wouldn't be here now. And something has got to be constructed here that really can take care of friend and foe alike. We can't just change the law every time there's a change in personnel of the Department of the Interior.

I would hope two things; No. 1, that certainly during this visit with the Governor—have you had a chance to sit down and do any fine-tuning with the Governor and with the Congressman and various representatives that are here. Have you all had a chance to meet?

Mr. MONTOYA. We have met, yes, sir.

Senator WEICKER. And where do we stand?

Mr. MONTOYA. I think where we stand is that there is general agreement that the delegation would ask this body to put us on hold for a while until all the players have had a chance to get together and tighten up the document, tie up some loose ends, so to speak, Mr. Chairman.

Senator WEICKER. Well, all right. If that's everybody's wish, certainly I have no objection to it.

I don't mind stating publicly, I am only one member of this subcommittee, and happen to be its chairman, but I don't think this is very far apart, frankly, from the administration, which I usually am very far apart from. My own inclination would be to take a one-sided position, which is to allow the Samoans, in other words, to decide their own matters. And if there is something that is raised by a Secretary of the Interior that flies in the face of their culture, that that's something they should have a right to go ahead and pass on.

I don't see how we could possibly expect to do the right thing by our friends in American Samoa by in any way using our standards and our criteria and our heritage, and so forth, to determine their future. I mean I don't think that's going to work, it just isn't. And I know that this administration certainly is committed to, quote, "local autonomy," which is what we're talking about. There's never been any argument on that point.

Mr. MONTOYA. And I am confident that this policy will continue for the next 4½ years. After that I think Mr. Bush will have to decide how that's going to be. [Laughter.]

When I started out, the point that I was trying to make is, this system has worked for American Samoa, and that's the system of

the traditional leaders and the elected officials. They work hand in hand. It's a good leadership. And, as we say in Texas, if it ain't broke, don't fix it.

Mr. SUNIA. Mr. Chairman, may I?

Senator WEICKER. Yes, Congressman.

Mr. SUNIA. I don't rise to object to the idea of 4½ more years. As a matter of fact, I would like that very much, as long as it's guaranteed that we have Rick for another 4½ years. He's been very good for us and to us.

I do want to make one point clear, that when the Secretary makes reference to holding the document in hand while we get a few things straightened out, he is referring to the proposed revision.

Senator WEICKER. That's correct.

Mr. SUNIA. That's No. 1. That's other than the constitution which is now in place, which was the subject of the law that was passed last year.

I would suppose, sir, that the scenario would be that while the proposed revision is held in abeyance and while maybe the leadership and convention goes back and ties up some loose ends, as the Secretary referred to them, in the meantime we work out here the procedure for the submission once all those loose ends are tied up. I just wanted to make that point clear, Mr. Chairman.

Senator WEICKER. I'm glad you made that clear, and I gather the Secretary is in agreement on that point.

Mr. MONTOYA. We're in agreement with that.

Senator WEICKER. So that if anything you want to facilitate this process and you will, as I said before, be in consultation with my staff and we will do it that way.

I have no ideas to impose either on you or on you. We're here to try to facilitate this matter to the satisfaction of the people of the American Samoa.

Mr. MONTOYA. I couldn't agree with you more, sir.

Senator WEICKER. It's as simple as that.

Mr. Secretary, it's always nice to have you here.

Mr. MONTOYA. It's a pleasure.

Senator WEICKER. Thank you very much.

Our next witness is Mr. Robert Shanks, the Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice.

STATEMENT OF ROBERT B. SHANKS, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE; ACCOMPANIED BY HERMAN MARCUSE

Mr. SHANKS. Good afternoon, Mr. Chairman. I'm accompanied today by Mr. Herman Marcuse, who is also of the Office of Legal Counsel, Department of Justice.

You have our written statement, and we would like to request that it be placed in the record.

Senator WEICKER. It will be placed in the record in its entirety.

Mr. SHANKS. Thank you. I would like to just summarize it now.

To begin, our statement is somewhat more qualified than we would usually like to make under these kinds of circumstances,

and that is partly because we were laboring under a certain lack of knowledge.

First of all, we were not entirely sure about what the contours were of the document that's before the Congress, or was before the Congress for approval. We were not sure whether the entire new constitution was here for approval, or whether certain amendments which were placed in the document for the sake of convenience were here for approval.

Second, we were somewhat uncertain as to the scope of congressional approval that was being reouested; essentially, whether Congress was being asked to approve the constitution and all the provisions in it, or whether congressional approval would merely authorize the Secretary of the Interior to approve the constitution pursuant to the 1929 joint resolution.

And the third reason for our qualification, frankly, was just our lack of familiarity in the Justice Department with the Samoan culture.

We know that it's based on the Matai system, which involves communal holding of land, and we know that there is also a hierarchy of chiefs, but basically we know simply that it is a culture that is different from our own, and we are uncertain about the particular ways in which imposition of the American Constitution might conflict with that culture and that system.

Nevertheless, we have attempted to analyze the proposed constitution of American Samoa against the background of the U.S. policy of protecting the American Samoan culture and the American Samoan way of life. As you know, that policy has been based partly on treaty and partly simply on our sense of obligation of not imposing our ways arbitrarily upon others. That protection of the American Samoan customs has been accomplished in part through a legal isolation of American Samoa, which stems in part from the fact that American Samoans are noncitizen nationals rather than American citizens.

There has been no Organic Act applicable to American Samoa, and the joint resolution of 1929 vested all civil judicial and military power in Samoa in the President. Since 1959, that power has been vested in the Secretary of Interior by delegation.

The effect of these factors taken together has been that decisions of American Samoan courts have not been directly reviewable in U.S. courts, rather they have been potentially reviewable by the Secretary of the Interior. The practical effect of this is that, with one exception, which is the *King* case mentioned in our written submission, there has been no judicial review of American Samoan customs by our courts. So in changing the constitution and in changing this relationship, we have to be concerned about the effect of that change upon this protective wall which protects the American Samoan culture.

Now, under article 3, sections 2 and 4 of the proposed constitution, the Supreme Count of Samoa, American Samoa, will become the court of last resort. Presumbly, this would eliminate the possibility of any review by the Secretary of the Interior. If there's no more review, then there's no more requirement for exhaustion of administrative remedies. And we are concerned that this might tempt Federal courts to become more active in reviewing decisions

of American Samoan courts, either on appeal, or possibly on mandamus, because the judges of American Samoan courts are appointees of the Secretary of the Interior. So we are, therefore, concerned generally about the possibility of opening the American Samoan institutions and culture to review by American courts that might not be familiar with that culture.

I'd like to turn now to questions and potential problems that we face from the text of the revised constitution. There are a number of minor technical and drafting matters which I don't plan to address. I think that these are minor things which we could resolve in discussions with the American Samoa representatives. We have dealt in our written statement with some potential problems which we think are more significant, and I'd like to just mention a few of them here.

Before going to the specific questions, there are a couple of general questions which I think pervade the constitution, and I'd like to just mention them. First of all, the qualification for officers of the government throughout the constitution is that they must be citizens of American Samoa. That appears in article 2, section 3, for senators and representatives; it appears in article 4, section 5 for the Governor and Lieutenant Governor. The term "citizen of American Samoa," which appears in article 5, section 11, however includes the requirement that those persons be of American-Samoan ancestry. But this term, which also appears in another provision which I will mention, dealing with alienation of land, is not defined anywhere in the constitution. We think it is imperative that this term be defined in the constitution. As we have pointed out in our written statement, this question has been successfully resolved, both in the case of the Northern Mariana Islands and in the case of native Hawaiians. Second, the term "United States national," which is used throughout in the constitution, is nowhere defined, and we think that is important to have that defined also.

In terms of specific observations or possible problems, I point first to the first two sentences of article 1, section 3, which provide as follows:

> It shall be the policy of the American Samoan Government to protect persons of American Samoan ancestry against alienation of their lands and destruction of the Samoan way of life and language, contrary to their best interest. Such legislation as may be necessary may be enacted to protect the communal or individually owned lands, customs, culture, and traditional Samoan family organizations of persons born of American Samoan ancestry, and to encourage and protect business enterprises by such persons.

Well, first of all, as you're very aware, Mr. Chairman, restrictions on alienability of land, especially those based on racial criteria, are extremely suspect under our constitutional system. We do believe it's possible, however—and this has been done in the case of native Hawaiians and citizens of the Northern Mariana Islands—to protect the local culture based on land ownership from exploitation by economically more advanced outsiders.

But since this provision appears to be an important one in the constitution, we would like to also point to some apparent drafting flaws. First of all, it's not clear whether the provision is intended to protect persons of American Samoan ancestry from all land alienation, or only alienation to persons not of American Samoan

ancestry; and second, as we pointed out, the constitution doesn't define American Samoan ancestry.

Elsewhere in article I, I think it bears mentioning that the Bill of Rights omits certain key provisions that were found in the original constitution. These provisions required, for example, separation of church and government, the exclusionary rule of evidence, the requirement that public education be free, and the privileges and immunities clause. Article I, section 6 contains a new provision that would prohibit bail where it is reasonably presumed under circumstances of a serious case that release of the accused would constitute a danger to the community. Finally, the constitution lacks an equal protection clause.

Turning to article II, section 1(c). That section would authorize enactment of legislation, "For the protection of our people against nuclear harm or from damages or use by others of fish, ocean products, or all other resources within its territorial waters."

As we pointed out in our written statement, we think this provision raises some questions about Federal supremacy in the areas of defense and commerce which should be addressed.

There are several provisions relating to the composition of the legislature and voting franchise which we think needs some attention.

Article II, section 3, dealing with senators and representatives, states that they must be citizens of American Samoa; in other words, they must be of American Samoan ancestry. Assuming arguendo that preservation of Samoan culture would permit such classifications based on racial considerations, these requirements need to be more clearly defined.

Also, article II, section 4, provides that senators are to be elected in accordance with Samoan customs by county councils. This provision, we think, could well violate the one-man-one-vote rule of *Reynolds* v. *Sims.* We don't think that this necessarily ends the inquiry, because as I mentioned in our written statement, we have called your attention to a similar provision in the Northern Marianas covenant. In that case, the provision was justified as condition upon the accession of the Northern Marianas.

Just a couple more problems that I think bear mentioning. Article 5, section 12, under "Congressional Limitations," provides that no Organic Act or similar legislation alienating Samoan communal land, or destroying the Samoan way of life, including its customs and traditions, shall be enacted by or on behalf of the American Samoan government without the express consent and approval of the traditional leaders and people of American Samoa. Obviously, a local constitution can't limit the powers of Congress, but even so, I think that we would caution against such a vague undertaking. We think basically the language here needs to be tightened up.

Senator WEICKER. Tell me something. Did the Justice Department, at the time the Samoans were deliberating on this matter of the constitution, did you people assist in any way?

Mr. SHANKS. No, Mr. Chairman, we didn't. As a matter of fact, we just became aware of it a couple of—at least I became aware of it a couple of weeks ago. We have not been involved.

Senator WEICKER. It seems to me it would be very helpful if both Interior and Justice were a part of that process to begin with, rather than arrive at this point.

Mr. SHANKS. Well, we would be happy to help out in any way that we can.

Senator WEICKER. I'm sorry, go ahead.

Mr. SHANKS. I just have one more that I would like to mention.

There's another provision contained in article I, section 3. It's basically an economic provision which states that no new business in whatever form, except businesses not in direct competition with American Samoan businesses, should be permitted to engage in business in American Samoa "unless 51 percent ownership and control of such business be vested in persons of American Samoan ancestry."

Now, apart from some phrasing which we think needs to be tightened up there, we would caution against including a very specific economic provision of this sort in a constitution, because we think this is the type of thing which may need to be subject to change and, therefore, should be put in legislation rather than cemented in the constitution.

As I mentioned, there are some problems of drafting or inconsistent phraseology. They are minor problems. We would be glad to work with the American Samoan representatives and be of any assistance that we can on these, but I don't think it's worth mentioning them here.

That is the end of our prepared statement. Mr. Marcuse and I would be happy to try to answer your questions, if you have any.

[The prepared statement of Mr. Shanks follows:]

Department of Justice

STATEMENT

OF

ROBERT B. SHANKS
DEPUTY ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

BEFORE

THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON ENERGY CONSERVATION AND SUPPLY
UNITED STATES SENATE

CONCERNING

REVISED CONSTITUTION OF AMERICAN SAMOA

ON

MAY 8, 1984

Mr. Chairman:

My name is Robert B. Shanks. I am a Deputy Assistant Attorney General in the Office of Legal Counsel of the Department of Justice. I am accompanied by Herman Marcuse, who is an Attorney-Adviser in the Office of Legal Counsel.

I am pleased to comply with your request for the views of the Department of Justice on the Revised Constitution of American Samoa, approved by a Constitutional Convention on February 16, 1984. As I shall explain presently, however, I must advise you that, for reasons that are beyond our control, our advice will be less conclusive and more qualified than we usually care to give.

First, we are not yet certain with regard to the contours of the document which is before Congress for approval. Nor are we clear on the scope of the Congressional approval requested. Your letter of April 10, 1984, advised us that the Constitutional Convention of Samoa approved a Revised Constitution which has been transmitted by the Governor of Samoa to Congress. According to § 12 of Public Law 98-213, 97 Stat. 1462, enacted last December, amendments or modifications to the Constitution of American Samoa, as it existed on January 1, 1983, "may be made only by Act of Congress."

There appears to be some uncertainty whether the Constitutional Convention adopted an entirely new Revised Constitution, or whether the Convention merely approved a number of amendments and inserted them in the body of the existing Constitution as a matter of convenience, so that Congress might evaluate what the Constitution would look like after the approval of the amendments and their incorporation into the Constitution. Absent a clarification of this point, the Department of Justice is uncertain whether the Revised Constitution as a whole, including the provisions of the original Constitution incorporated in it, or only the amendments to the existing Constitution made by the Constitutional Convention, are before Congress.

Second, the purpose and effect of Congressional approval under § 12 of the 1983 Act are not immediately evident. It is not certain whether under that provision Congress itself approves the amendments to the original Constitution, or whether Congress merely authorizes the Secretary of the Interior to amend, or to ratify any amendment of, the Constitution. In view of ambiguities surrounding the legislative history, we shall assume for the purposes of this testimony that Congress approves the Constitution and does not merely authorize the Secretary of the Interior to do so.

Third, our familiarity with the Samoan culture is very limited. We are therefore under a severe handicap in evaluating the provocative and difficult question whether approval of the Samoan Constitution could subject Samoan customs and practices to review under our constitutional system, and thereby inadvertently jeopardize the Samoan culture. According to our rudimentary information on this subject, the Samoan culture and way of life are based on the communal holding of property by an extended family, headed by an elected leader, the Matai, who directs the cultivation of the lands and the distribution of the harvest, as well as most of the social and religious life of the group. In addition, there is a hierarchy of chiefs and high chiefs. This type of society clearly differs from our more egalitarian and individualist culture, which has been incorporated in our legal and constitutional systems.

It has been the constant policy of the United States, partly as a matter of honor, partly as the result of treaty obligations, not to impose our way of life on Samoa. While the Treaty of 1900, under which the United States acquired the western part of American Samoa, is silent on this issue, this policy was apparently implied in that agreement. President Theodore Roosevelt's official recognition of the cession, dated July 21, 1902, stated expressly that local rights and privileges would be respected. S. Rept. No. 984, 70th Cong.,

1st Sess. 2 (1928); H.R. Rep. No. 2451, 70th Cong., 2d Sess. (1929); 70 Cong. Rec. 3411 (1929). This legislative history relates to the Joint Resolution of February 20, 1929, 45 Stat. 1253, 48 U.S.C. 1661, which formally extended United States sovereignty over American Samoa. The treaty with the King and chiefs of Manu'a of 1904, under which the United States acquired sovereignty over the eastern part of American Samoa, provided specifically "that the rights of the Chiefs in each village and of all people concerning their property according to their customs shall be recognized."

The main technique used to "protect" the Samoan culture from incursions by American mainland political, economic, and societal influences has been to isolate American Samoa legally from the rest of the United States. The American Samoans are not American citizens but rather are non-citizen nationals of the United States. Congress has not enacted an organic act. Section 1(c) of the Joint Resolution of February 29, 1929, has vested all civil, judicial, and military powers on Samoa in the President, to be exercised by such persons and in such manner as he directs. Since 1951 the President's delegate has been the Secretary of the Interior. Executive Order No. 10264 of June 29, 1951. In the same vein, the decisions of the Samoan courts are not reviewable in the United States federal courts, but rather potentially by the Secretary of

the interior by virtue of the delegation to him of the President's judicial powers.

This legal isolation of American Samoa from the rest of the United States has resulted in a minimal intrusion of the American legal system into those islands. The only exception of which we are aware is the King case (King v. Morton, 520 F.2d 1140 (D.C. Cir. 1975) and King v. Andrus, 452 F.Supp. 11 (D.D.C. 1977)), which held that the United States constitutional requirement of trial by jury extends to American Samoa. A reading of the District Court's decision demonstrates the difficulties inherent in the evaluation of the Samoan culture by judges steeped in our common law and individualistic private property traditions, and using the common law methods of proof. Parenthetically it might be suggested that if litigation involving American Samoa is at all to be decided by federal courts, jurisdiction over such cases might preferably be conferred on the courts in the Ninth Judicial Circuit, which is closer to, and deals more frequently with, problems arising in the Pacific.

As the result of this legal isolation of American Samoa, the Department of Justice has had little contact with Samoan institutions and with the ways in which they operate. In view of our ignorance on this subject, my testimony today

must be, at best, tentative. We have been promised by the Samoan authorities that they will help us to remedy this defect in our understanding, if it should become necessary.

A fourth reason for our tentativeness is the question of the effect which Congressional approval of the Constitution would have on the Joint Resolution of 1929, which vests in the President all civil and judicial powers relating to Samoa. An argument could be made that approval could be construed as repealing the 1929 legislation by implication and as transferring those civil and judicial powers to the local officials and courts to the extent provided for in the Constitution. In that case, the relationship between the Federal Government, especially the Executive Branch, and American Samoa would be virtually undefined and it would be necessary to fill the gap by the enactment of legislation in the nature of a Samoan Federal Relations Act, or an Organic Act. On the other hand, if Congressional approval is not designed to affect the President's powers under the Joint Resolution of 1929 legislation, the powers of the Samoan authorities under the Samoan Constitution would remain subject to the President's paramount civil, judicial and military powers under the Joint Resolution.

If this Committee should decide that further hearings on this Constitution should be held after these and other uncertainties have been resolved, we expect to be able to give more precise answers to those questions.

In view of the past policy of protecting the Samoan culture by preventing direct access to the federal courts, I shall now touch briefly on the question whether Congressional approval of the Constitution might have the unexpected effect of undermining that protective wall.

First, under Article III §§ 2, 4 of the Constitution, the Supreme Court of American Samoa would be a court of last resort. This would presumably eliminate the possibility of the review of its decisions by the Secretary of the Interior. In the past, review of the decisions of the Samoan courts by the federal courts was precluded until the administrative remedy -- review by the Secretary of the Interior -- had been exhausted. As a practical matter, disputes have been successfully resolved without resort to the federal courts, with the exception of the King case. That exhaustion requirement would no longer exist if the Supreme Court of Samoa truly became a court of last resort. In that situation, the federal courts might be tempted to review the decisions of the Supreme Court of American Samoa, on appeal or, since the judges are

appointees of the Secretary of the Interior, by mandamus. As shown by the discussions in the opinions in Guam v. Olsen, 431 U.S. 195 (1977), involving the authority of Guam to establish an appellate court in the absence of federal legislation providing for the review of its decisions by the federal courts, the federal courts are troubled by the establishment of territorial courts, the decisions of which are not reviewable in the federal judicial system.

In addition, I feel constrained to bring to your attention a case now pending in the Supreme Court of the United States on petition for a writ of certiorari. This case raises the seemingly paradoxical possibility that the very Congressional approval of the Samoan Constitution, in particular of those provisions which might be inconsistent with the Constitution of the United States, could facilitate scrutiny and possible invalidation of Samoan institutions by the federal courts under our own Constitution. That case, Atalig v. Commonwealth of the Northern Mariana Islands, No. 83-6424, involves the constitutionality of § 501 of the Covenant with the Northern Mariana Islands pursuant to which, in the local courts of those islands, trial by jury would be required only to the extent prescribed by local law.

The Appellate Division of the District Court for the Northern Mariana Islands held that Congress lacked the power

to grant exemptions from the constitutional requirement of trial by jury. The Court of Appeals for the Ninth Circuit reversed. Commonwealth of the Northern Mariana Islands v. Atalig, 723 F.2d 682 (9th Cir. 1984). Atalig filed a petition for a writ of certiorari in the Supreme Court presenting the question "whether Congress has power to authorize governments of unincorporated territories to dispense with rights that have been found by the Supreme Court to be fundamental under the Constitution for the inhabitants of the fifty states." Should the Supreme Court grant the petition for a writ of certiorari in Atalig and ultimately reverse the decision of the Court of Appeals, Congressional approval of the Samoan Constitution and the provisions of that document could be subject to judicial review, since as I will show presently, the Constitution appears to contain a number of departures from the Constitutional provisions applicable to the States on the ground that the latter are incompatible with the Samoan culture.

The current pendency of the Atalig case before the Supreme Court and the uncertainties created by it may add to the consideration that this may not be an auspicious time for the approval of a new Samoan Constitution.

An examination of the text of the Revised Constitution raises a number of questions and potential problems. We are

confident that many, if not most, of these problems, which are of a technical or drafting nature, can be solved easily by discussing them with the Samoan representatives; hence, there appears to be no need to burden this Committee with them. Only a few points are worth mentioning here.

Before entering into a discussion of any specific provision, however, we should like to draw your attention to two questions involving definitions which pervade the entire Constitution.

First, many of the sections dealing with government offices include the qualification that certain officers must be citizens of American Samoa. See e.g., Art. II, § 3 (Senator, Representative); Art. IV, § 5 (Governor and Lieutenant Governor). The definition of the term "citizen of American Samoa" in Art. V, § 11 includes the requirement that the person be of "American Samoan ancestry." That term, which also appears in Art. I, § 3 (protection against the alienation of land), however, is nowhere defined in the Constitution. Obviously it is imperatiave that there be no uncertainty as to the qualifications for government offices in Samoa. Hawaii and the Northern Mariana Islands, which were faced with similar definitional problems, were able to solve them. See the definitions of "native Hawaiian" in the Hawaiian Homelands legislation, 48 U.S.C. § 692(a)(5), and of "persons of Northern

Marianas descent" in Constitution of the Northern Mariana Islands, Art. XII, Section 4.

Second, the Constitution frequently uses the term "United States National" (see e.g., Art. II §§ 2, 7; Art. V § 4). Here it is not clear whether the term is used in the sense of "United States citizens or United States non-citizen nationals" (8 U.S.C. § 1101(a)(22)), or whether it is limited to non-citizen nationals, i.e., a person who, although owing permanent allegiance to the United States, is not a citizen thereof. 8 U.S.C. § 1101(a)22(B).

We have the following more specific, but by no means all-inclusive, observations, which may serve as examples of the problems presented by the various uncertainties as to the scope and effect of Congressional approval of the Constitution.

1. The second sentence of Article I, § 2 would provide:

> "Any private or communal property taken for public use, and has not been used for public purpose within five (5) years from the initial taking, shall be returned to the owner of such property together with any improvement thereon without further compensation."

It is not apparent whether this sentence is intended to apply only to property taken under a Samoan eminent domain statute, or also applies to property acquired under federal law.

This provision raises the further question whether Congressional approval of the Constitution could have the effect of acquiescence by the Federal Government in the provision requiring the return to the original owner of property not put to public use where the property was acquired by the United States under the Federal Eminent Domain Statutes.

2. The first two sentences of Art. I, § 3 would provide:

> "Section 3 - Policy Protection Legislation: It shall be the policy of the American Samoan Government to protect persons of American Samoa ancestry against alienation of their lands and the destruction of the Samoan way of life and language, contrary to their best interest. Such legislation as may be necessary may be enacted to protect the communal or individually owned lands, customs, culture, and traditional Samoan family organizations of persons born of American Samoan ancestry, and to encourage and protect business enterprises by such persons."

Provisions limiting the alienability of land, especially where they are based on racial criteria, raise prima facie the question of an unconstitutional invidious discrimination. We believe, however, that such limitations may be permissible to protect a local culture based on land ownership from exploitation by aggressive and economically more advanced outside groups. As shown in the section-by-section analysis prepared by this Committee on the Joint Resolution approving the Covenant with the Northern Mariana Islands, similar legislation has been enacted to protect Indians, native Hawaiians and persons of Northern Mariana Islands descent. See S. Rept. No. 433, 94th Cong., 1st Sess. 87-88 (1975). I might add that the outcome of the Atalig litigation may have some bearing on the extent to which this provision may be subject to the scrutiny of courts unfamiliar with the Samoan culture.

Since this provision appears to be the cornerstone of the Samoan Constitution, I wish to call attention to several drafting flaws in it. First, it is not clear whether the section is designed to protect persons of American Samoan ancestry against the alienation of their land altogether, or only against alienation to persons who are not of American Samoan ancestry. Second, as we have pointed out above, the Constitution does not define the term "American Samoan ancestry."

Before leaving Art. I of the Constitution, which contains the Bill of Rights, I wish to bring to your attention that this Bill of Rights omits several significant provisions that were encompassed in the original Constitution. The omissions include the provision requiring the separation of church and government in Art. I, § 1; the exclusionary rule of evidence in Art. I, § 5; a requirement that public education be free in Art. I, § 11; and the Privileges and Immunities clause in Art. I, § 12. Art. I, § 6(d) contains a new clause which would prohibit the grant of bail "where it is reasonably presumed under circumstanaces of a serious case that release of the accused would constitute a danger to the community." The Constitution also lacks an Equal Protection Clause.

3. Art. II, § 1(c) would authorize the enactment of legislation:

> (c) "for the protection of our people against nuclear harm or from damages or use by others of fish, ocean products, and all other resources within its territorial waters."

Here again the question arises, as it does under Art. I, § 2, whether Congressional approval of the Constitution would

constitute a waiver of the federal supremacy in the fields of defense and commerce.

4. The Constitutional provisions relating to composition of the legislature and to the voting franchise raise a number of problems.

a. According to Art. II, § 3, the Senators and Representatives must be citizens of American Samoa, which means, according to Art. XII, § 5 discussed above, that they must be of American Samoan ancestry. Assuming arguendo that the preservation of the Samoan culture permits qualifications for public office based on racial considerations, it should be required at a minimum that this requirement be clearly defined.

b. According to Art. II, § 4, Senators shall be elected in accordance with Samoan custom by the county councils they are to represent. This provision would probably, in its practical application, violate the "One Man - One Vote" rule of Reynolds v. Sims, 377 U.S. 533 (1964). In the case of an analogous departure from that rule in § 203(c) of the Covenant with the Northern Mariana Islands, the departure was rationalized on the ground that it constituted a compromise without which the accession of the Northern Mariana Islands to the United States could not have been accomplished. See S. Rep. No. 433, 94th Cong., 1st Sess. 69 (1975). Here it might be said

that this departure from the "One Man - One Vote" rule complies with the previously mentioned undertakings of the United States to respect the local rights and privileges.

c. Art. II, § 7 would impose a voting qualification of two years of residence in American Samoa and of one year in the election district. These residence requirements are inconsistent with Dunn v. Blumstein, 405 U.S. 330 (1972). Here again it might be argued that the standards established for the highly mobile society in the United States need not necessarily apply to the Samoan way of life which, to our knowledge, is of a less transient nature.

d. Similar considerations apply to Art. IV, § 5 establishing the qualifications for the offices of Governor and Lieutenant Governor.

5. We have serious difficulties with Art. V, § 12 entitled "Congressional Limitations," which provides:

> "No organic act or similar legislation alienating Samoan communal land or destroying Samoan way of life including its customs and traditions, shall be enacted by or on behalf of American Samoa Government without the expressed consent and approval of the traditional leaders and people of American Samoa."

Obviously a local constitution cannot by itself limit the powers of Congress. In evaluating the effect that Congressional approval of the Constitution might have, however, one must begin with the normal rule that one Congress cannot limit the legislative powers of subsequent Congresses. There are, however, limited exceptions to this rule, e.g., where Congress creates vested rights or where a Congress agrees in the context of a negotiating process not to exercise certain legislative rights unilaterally. This was done, for instance, in the Mutual Consent provisions of § 105 of the Covenant with the Northern Mariana Islands. See S. Rept. No. 94-433, 94th Cong., 1st Sess. 67 (1975). The approval of the Samoa Constitution, however, would be a unilateral act of Congress, not arrived at in a negotiation process.

Moreover, even if Congress had the power to limit the exercise of its legislative powers over American Samoa, we would counsel against an undertaking as broad as not to enact legislation "destroying [the] Samoan way of life including its customs and traditions." The application of almost any American statute to American Samoa might conceivably be challeged, with some justification, on the ground that it

somehow destroys the Samoan way of life or its customs or traditions.

I turn now to the third sentence of Art. I, § 3. That provision raises the question of the wisdom of including in the Constitution a provision which is of an economic nature and which may have to be modified speedily. That sentence would provide:

> "No new business in whatever form, except businesses not in direct competition with same, shall be permitted to engage in business in American Samoa unless fifty-one per cent (51%) ownership and control of such business be vested in persons of American Samoan ancestry."

Apart from the somewhat ambiguous phrasing of that sentence, and the uncertainty of the meaning of the term "American Samoa ancestry", which I have already discussed, I do not think a provision of that nature belongs in a Constitution. As circumstances change, experience could demonstrate that such a provision could burden the economic development of Samoa by preventing or discouraging needed outside investments. Such a provision, which may require expeditious modification, should not be frozen into a Constitution but rather should be

embodied in simple legislation, which can be amended more readily.

As mentioned before, there are a number of provisions in the Constitution which present drafting problems or contain inconsistent phraseology. This hearing is obviously not the time and place to discuss them. We have noted them and would be happy to discuss them with the Samoan authorities.

I am at the end of my prepared statement. If you have any questions Mr. Marcuse and I shall endeaver to answer them to the best of our ability.

Senator WEICKER. Well, I think you have been pretty complete in your rundown.

It almost sounds like you would like to have them adopt the Constitution of the United States verbatim as——

Mr. SHANKS. Not at all, Mr. Chairman.

Senator WEICKER [continuing]. Their Constitution. That's what really brings us here. I'm proud of our Constitution. As you know, I spend half my time on the Senate floor.

Mr. SHANKS. I know, Mr. Chairman, but we——

Senator WEICKER. I just don't know how that sits with the American Samoans. It's their life.

Mr. SHANKS. Not at all. The last thing that we're interested in is trying to impose American institutions, even our Constitution, of which we're all very proud, on them.

Our concern here is simply that we may unwittingly subject their culture to review by American courts and——

Senator WEICKER. I understand that.

Mr. SHANKS [continuing]. Impose those constitutional values on them without meaning to.

Senator WEICKER. Have you ever had a request, as a matter of legal history, by an American Samoan for review? Have we received an appeal through our process from an American Samoan?

Mr. SHANKS. We have received one case—not by an American Samoan. The *King* case involved an American citizen who was tried in American Samoa without a jury. That led to a decision by the court of appeals here in the District of Columbia extending the right of trial by jury to American Samoa. But that's the only one that I'm aware of.

I think that the lack of judicial review has been a function of the relationship which we have had, and of the policy of attempting to protect the American Samoan traditions.

Senator WEICKER. Governor, during the course of all these delib-

erations, vis-a-vis the Constitution, and the relationships with the Congress, and the difficulties that you have had 1 year ago, what is the attitude of the American Samoan people as to the status that they would prefer? This is just out of curiosity. I don't mean to raise something that might be politically sensitive, but I'd like to ask that question just from my point of view.

Are the American Samoans pleased insofar as the present legal relationship—I'm not talking about their attitudes toward the United States, I assume that we're friends, but as to the legal status. What do you think most people would want in American Samoa?

Mr. COLEMAN. We had a Political Status Commission that studied the question of our political status extensively in some form. And their conclusion was to maintain the status quo. The present relationship is satisfactory to us, because we feel it's a little bit too early to impose fully the impact of the U.S. Constitution. And we know that if we are tied into the U.S. legal system, that there will be judges sitting there to determine questions without sufficient background on their part to decide the future of our culture.

So even though we—some of us are U.S. nationals, some of us are U.S. citizens, but those who are U.S. nationals may become American U.S. citizens at any time. They do not require special immigration requirements, but they can join and volunteer in the armed services, for instance.

So under the present status, we are participating fully in meeting our own obligations to our country, the United States, joining the armed services and performing other work, people work in the Federal Government without changing our political st tus.

Senator WEICKER. I thank you very much.

And I thank Mr. Shanks for his testimony.

Are there any other matters that anybody cares to raise, if so please speak, otherwise, the hearing will be adjourned.

[No response.]

[Whereupon, at 2:05 p.m., the hearing was adjourned.]

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